

# **EXHIBIT A**

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and Bard Peripheral Vascular, Inc.*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

IN RE: Bard IVC Filters Products Liability  
Litigation,

No. 2:15-MD-02641-DGC

DEFENDANTS' [PROPOSED] CASE  
MANAGEMENT ORDER NO. \_\_\_\_

**(Discovery Protocols for Discovery  
Group 1)**

Pursuant to Case Management Order No. 11 [Doc. 1662], Case Management Order No. 18 [Doc. 3685], and Case Management Order No. 19 [Doc. 4311] the Court enters this Case Management Order No. \_\_\_\_ regarding the discovery to be conducted specific to the cases in Discovery Group 1.

[Defendants have incorporated into this Proposed Order the jointly agreed upon discovery protocols and have added in **bold and underlined** the additional discovery protocols Defendants request in their submission.]

**I. DEPOSITION PROTOCOLS GENERALLY**

A. Case Management Order No. 14 shall apply to Discovery Group 1.

1           B.     The additional protocols of this Case Management Order shall also apply to  
2                 Discovery Group 1 as provided herein.

3           C.     Pursuant to Case Management Order No. 11, Section V.A.3 and Case  
4                 Management Order No. 18, Section B, the Parties will provide discovery  
5                 protocols applicable to Bellwether Group 1 by no later than April 28, 2017.

6   **II.    DEPOSITIONS PERMITTED**

7           A.     Prior to April 10, 2017, the Parties may take the following depositions in  
8                 each case that is part of Discovery Group I:

- 9                 1.     The principal Plaintiff and any loss-of-consortium plaintiff;  
10                2.     The spouse or significant family member of the Plaintiff if there is no  
11                loss-of-consortium plaintiff;  
12                3.     The implanting physician; and  
13                4.     One additional treating physician as selected by Defendants.

14          B.     The implanting physician and treating physician agreed upon by the  
15                 parties will be deposed pursuant to the provisions of Case Management  
16                 Order No. 14, Section H 1 and 4 [Doc. 2239]. The parties will alternate  
17                 as to which party first examines the physician witnesses. Plaintiffs'  
18                 counsel will be the first examining counsel for the implanting physician  
19                 in each case that was a Defendants' Discovery Group 1 selection, and  
20                 Defendants' counsel will be the first examining counsel for the  
21                 implanting physician in each case that was a Plaintiffs' Discovery  
22                 Group 1 selection. The party who was not the first examiner for the  
23                 implanting physician shall be the first examiner for the agreed upon  
24                 treating physician.

25          C.     Nothing in this Order is intended to limit additional fact discovery in cases  
26                 selected for inclusion in Bellwether Group 1.

1 **III. PROTOCOLS RELATING TO TREATING PHYSICIANS**

2 **A. Ex Parte Communications with Treating Physicians**

- 3 1. Defendants are prohibited from communicating *ex parte* with  
4 Plaintiffs' treating physicians.  
5 2. Plaintiffs' counsel may communicate *ex parte* with treating  
6 physicians.

7 **B. Limitations on Plaintiffs' Ex Parte Communications with Treating**  
8 **Physicians**

- 9 1. Plaintiffs' counsel's *ex parte* communications with treating  
10 physicians are limited to discussion of that physician's treatment  
11 of the Plaintiff at issue. Such discussion may include review of  
12 the physicians' medical records, course of treatment, Instructions  
13 for Use and brochures for the specific device implanted in that  
14 Plaintiff.  
15 2. Plaintiffs' counsel are prohibited from engaging in *ex parte*  
16 discussions with Plaintiffs' treating physicians concerning  
17 liability issues or theories, or Defendants' internal documents,  
18 research, analysis, trending, or related materials.  
19 3. Plaintiffs must inform the treating physicians that any  
20 interviews, pre-deposition discussions or substantive written  
21 communications with Plaintiffs counsel are voluntary and may be  
22 declined.  
23 4. Consistent with the Stipulated Protective Order [Doc. 269], in  
24 any *ex parte* communications with Plaintiffs' treating physicians,  
25 Plaintiffs' counsel are not precluded from disclosing the following  
26 documents so long as the disclosure is consistent with Section  
27 III.B.2 above:  
28

- a. Documents (including documents from the previously produced ESI) to, from, or referencing the treating physician to whom the disclosure is being made;
- b. IFUs, warning communications, brochures, other marketing materials, including medical literature, seminar, training or other educational materials disseminated to physicians by Bard, related to the inferior vena cava filter implanted in that particular plaintiff.

**C. Disclosure of Documents Prior to Depositions of Treating Physicians**

1. If Plaintiffs' counsel has communicated *ex parte* with a treating physician who will be deposed, Plaintiffs' counsel shall identify by production bates number (or provide a copy if no such bates numbers exist) to opposing counsel all documents provided, shown, read from, or otherwise specifically described to the witness, other than the physician's records of treatment, at least five (5) days prior to the deposition.
2. For *ex parte* meetings with a physician that take place less than five (5) days prior to the deposition:
  - a. at least 24 hours prior to the meeting, Plaintiffs' counsel shall identify by production bates number (or provide a copy if no such bates numbers exist) to opposing counsel all documents they intend to provide, show, read from, or otherwise specifically describe to the witness, other than the physician's records of treatment;
  - b. as soon as practicable after the meeting, Plaintiffs' counsel shall disclose to opposing counsel all documents that were actually provided, shown read from, or otherwise specifically

described to the witness, other than the physician's records of treatment.

3. At least five (5) days prior to a physician deposition, all examining counsel shall provide to opposing counsel and deponent's counsel copies of documents that may be shown to the witness during the deposition or about which counsel expects to examine a deponent, other than the physician's records of treatment. The obligations of this section include the good faith representations of counsel to identify only those documents actually intended to be utilized during the deposition, not to exceed 40 in number.

DATED this 3rd day of January, 2017.

By: s/Richard B. North, Jr.

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